

APPEAL NO. 010033

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 6, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh, eighth, and ninth quarters. In his appeal, the claimant argues that the hearing officer's determinations that he did not make a good faith job search in the qualifying periods for the seventh, eighth, and ninth quarters and that he is not entitled to SIBs for those quarters are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's unemployment in the relevant qualifying periods was a direct result of his impairment from the compensable injury.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the seventh, eighth, and ninth quarters. Under the 1989 Act the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The claimant attempted to establish his entitlement to SIBs for the seventh quarter by establishing that he had no ability to work for a portion of the qualifying period and by conducting a job search in the portion of the qualifying period that he was released to light duty by his treating doctor. The hearing officer determined that the claimant did not sustain his burden of proving no ability to work under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4). Specifically, she determined that the claimant did not provide a narrative that sufficiently explained how the claimant's injury caused a total inability to work and that other records show that the claimant had some ability to work in the qualifying period for the seventh quarter. The hearing officer was acting within her province as the fact finder in resolving the conflicting evidence against the claimant and nothing in our review of the record demonstrates that the hearing officer's determination that the claimant had some ability to work in the qualifying period for the seventh quarter is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. The claimant acknowledged that he did not conduct a job search in every week of the qualifying period as is required to establish a good faith job search under Rule 130.102(e). Accordingly, no sound basis exists for us to reverse the hearing officer's determination that the claimant is not entitled to SIBs for the seventh quarter. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The claimant attempted to establish his entitlement to eighth and ninth quarter SIBs under a no-ability-to-work theory. Again, the hearing officer determined that the claimant's evidence was insufficient to establish total inability to work under the requirements of Rule 130.102(d)(4) because there was not a narrative that explained how the injury caused a total inability to work and other records showed an ability to work. The hearing officer's determinations in that regard are not so contrary to the great weight of the evidence as to compel their reversal on appeal. *Id.*

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge